

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

FILED

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

SOUTHERN NATURAL GAS  
COMPANY

Plaintiff,

vs.

1.864 ACRES OF LAND  
LOCATED IN WALKER  
COUNTY, ALABAMA; ARLENA  
BAILEY; et al.,

Defendants.

RE: Walker Tract No. 124

CV 97-L-1726-S

NOV 24 1999

ENTERED

MEMORANDUM OPINION

I. Introduction

Currently pending before this court is an objection to the Report of Commissioners filed by defendants, Arlena Bailey and Carvin Bailey. Under Rule 53(e)(2) of the Federal Rules of Civil Procedure, "the court after hearing may adopt the report or may modify it or may reject it in whole or in part." Likewise, the court's review of the Report of Commissioners is only for clear error. The following paragraphs contain the issues that were discussed in oral argument, the party's objections to the Report of Commissioners, as well as the court's findings and final judgment.

## II. Discussion and Findings

### A. Damages Awarded for the Permanent Easement

The Commissioners awarded \$1,864 in the permanent pipeline easement. Defendants object generally to the values awarded. The court however finds that defendants have failed to demonstrate any clear error on the part of the Commissioners, and, as such, the Commissioners' findings are approved and adopted as the findings of the court.

### B. Amount Awarded for Temporary Easement

The Commissioners recommended that \$500 was appropriate compensation for the temporary construction easement. The Commissioners' findings are approved and adopted as the findings of the court.

### C. Amount Awarded for Timber Damage

The Commissioners recommended that damage to the timber in this easement amounted to \$3,240. The Commissioners' findings are approved and adopted as the findings of the Court.

### D. Damage to the Remaining Property

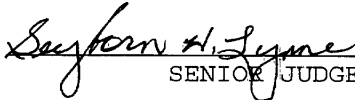
The Commissioners recommended that landowners be awarded no compensation for damage caused by the pipeline outside of the permanent easement. Defendants object to this award claiming that the Commissioners disproportionately relied upon the evidence of plaintiff's witness and that they offered several witnesses who

testified that the remaining property did suffer a loss of value. However, for remainder damages to be an appropriate element of just compensation, the landowners, through credible evidence, must: (1) establish a probable use of the remaining property in the reasonably near future; and (2) establish that the presence of the pipeline will adversely impact such use. The landowners have failed to meet this burden, and as such, the Commissioners' findings are approved and adopted as the findings of the Court.

### III. Conclusion

The Commissioners have recommended an award to the owners of the property in the above-described easement in the amount of \$5,604. Having concluded that no element of the Commissioners' award is clearly erroneous, the court approves and adopts the Report of Commissioners in whole. In view of the foregoing discussion, a separate judgment will be entered in the amount of \$5,604 as just compensation in favor of the defendant.

DONE this 24<sup>th</sup> day of November 1999.

  
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SENIOR JUDGE